Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Advanced Television Systems	)	MM Docket No. 87-268
and Their Impact upon the	)	
Existing Television Broadcast Service	)	
	)	

To: The Commission

REPLY COMMENTS OF RIVERBANK RESTAURANTS, INC.

Riverbank Restaurants, Inc. ("Riverbank"), by its attorneys, hereby submits its reply comments concerning the Sixth Further Notice of Proposed Rulemaking in the above-captioned matter (the "Notice").

Pursuant to an application, File No. BPCT-960920IE, timely filed with the Commission on September 20, 1996, 1/ Riverbank is seeking authority to construct a new NTSC television station on Channel 39, a vacant NTSC allotment at Parkersburg, West Virginia. Grant of Riverbank's application would permit the addition of a second local television service to the underserved Parkersburg, West Virginia-Marietta, Ohio television DMA. In order for Riverbank's application to be

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1/ Riverbank filed its application within the window established in the Notice for applications for new NTSC stations. Notice at ¶60. Riverbank also sought a waiver of the "DTV Freeze" imposed in Advanced Television Systems and Their Impact on the Existing Television Broadcast Service, RM-5811 (released July 17, 1987).

granted and its public interest benefits to be realized, the draft DTV table of allotments attached to the Notice (at Appendix B) would require certain modifications to enable Riverbank's proposal to meet the proposed minimum distance separation requirements set forth in the Notice at ¶98. Specifically, the draft table proposes the allotment of DTV channel 39 to each of Weston, West Virginia, and Cleveland, Ohio, which are located 103.8 km and 221.7 km, respectively, from Riverbank's proposed facility, and both of which are within the 244.6 km DTV to NTSC co-channel minimum spacing requirement proposed in the Notice. See Notice at ¶98. In addition, the draft DTV table proposes the allotment of DTV channel 40 to Zanesville, Ohio, which is located 70.9 km from Riverbank's proposed facility. The Notice would not permit the allotment of adjacent DTV and NTSC channels between 9.7 km and 88.5 km. Id.

According to an engineering study conducted by Joseph Davis of Cavell, Mertz and Perryman, Inc. ("Engineering Statement," attached hereto as Exhibit A), Riverbank's proposed facility would cause only minimal interference to the Notice's proposed DTV allotments in Cleveland and Zanesville, but could cause significant interference to the proposed co-channel DTV allotment in Weston, West Virginia. Exhibit A at 4.

The Commission anticipated making revisions to the draft DTV table as appropriate. See Notice at ¶2. Riverbank submits that the draft DTV table could be revised to accommodate its application and all DTV spectrum needs. Thus, for example, the DTV allotment proposal sponsored by the Broadcasters Caucus

("Broadcasters") does not require the use of DTV channel 39 at Weston, West Virginia, with the result that Riverbank's proposed NTSC station would be short-spaced to only two DTV allotments proposed in the Broadcasters' table: the allotment of DTV channel 39 to Akron, Ohio and DTV channel 40 to Zanesville, Ohio.

However, as indicated in Exhibit A at 4-5, Riverbank's proposed NTSC station would cause only minimal interference to the Broadcasters' Zanesville allotment 2/ and negligible interference to its Akron allotment. It also should be noted that Riverbank has proposed to operate its NTSC station at "reduced facilities." See Exhibit A at 5; Notice at ¶60 (contemplating the grant of applications for new NTSC stations with reduced facilities).

The Broadcasters' table demonstrates that it is entirely possible to accommodate Riverbank's application and meet DTV spectrum needs. The public interest benefits of Riverbank's application present compelling reasons for doing so. As stated in the application, the Parkersburg - Marietta DMA is uniquely underserved. 3/ The transition to DTV, if it occurs at all, will take many years. The residents of the underserved Parkersburg - Marietta DMA should not be denied a second local television service during this lengthy transition, especially if the DTV table can be revised to accommodate such a service.

2/ According to the Engineering Statement, Riverbank's proposed facility would result in a decrease of only 1.7% in the Zanesville population covered by the Broadcasters' proposed DTV allotment. See Exhibit A at 5.

3/ See Riverbank Application, Exhibit D at 2-3, 5, and accompanying Engineering Statement C.

For the foregoing reasons, Riverbank respectfully submits that the draft DTV table set forth in the Notice should be revised to accommodate its application to provide a second television service to the Parkersburg - Marietta DMA on NTSC channel 39.

Respectfully submitted,

RIVERBANK RESTAURANTS, INC.

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January 23, 1997

Exhibit A

ENGINEERING STATEMENT

prepared for

Riverbank Restaurants, Inc.

Parkersburg, West Virginia

Ch. 39 1900 kW 185 m

This statement has been prepared on behalf of *Riverbank Restaurants, Inc.* (*"Riverbank"*). *Riverbank* recently proposed to construct a new television station on Channel 39, allotted to Parkersburg, West Virginia (file number BPCT-960920IE).

As discussed in *Riverbank's* application, the proposed transmitter site is located at an insufficient distance to certain metropolitan areas to satisfy the requirements of the FCC's "freeze" Order released July 17, 1987 regarding spectrum for advanced television.[1] The proposed site is within the "freeze" area for Columbus and Cleveland, Ohio, and Pittsburgh, Pennsylvania.

The Commission has granted waivers of the 1987 "freeze" in prior cases, where under served areas are identified and the proposal may not impede the implementation of advanced television. A waiver of the "freeze" order was requested in *Riverbank's* application. That application provided data in regard to the proposed facility's service to under-served areas and discussed (in general terms) the possible impact on advanced television. This statement provides supplementary data in regard to advanced television in support of *Riverbank's* waiver request. Inasmuch as the proposed Channel 39 site is fully-spaced to all existing NTSC assignments under §73.610 and §73.698, no discussion of other NTSC facilities is made herein.

In the Sixth Further Notice of Proposed Rule Making ("6th FNPRM") released August 14, 1996,[2] the Commission proposed a digital television ("DTV") table of allotments. An allocation study was made to determine the impact of the proposed Channel 39 facility on the draft assignments listed in the 6th FNPRM table. Using the proposed minimum distance separation requirements in paragraph

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[1] See RM-5811, *Advanced Television Systems and Their Impact on the Existing Television Broadcast Service.*

[2] See MM Docket 87-268 *Advanced Television Systems and Their Impact on the Existing Television Broadcast Service* FCC 96-317.

98 of the 6th FNPRM, the study showed that the proposed Channel 39 facility would meet the spacing standards to all DTV allotments as proposed in the table, except for the following:

DTV Facility (FCC draft table)	**Actual Distance (km)**	**Required Spacing (km)**
Weston, WV DTV channel 39	103.8	≥244.6
Cleveland, OH DTV channel 39	221.7	≥244.6
Zanesville, OH DTV channel 40	70.9	≤9.7 or ≥88.5

An interference analysis was performed to study the possible impact of the proposed Channel 39 facility on the draft DTV facilities listed above. The analysis was conducted with the modeling program "HDTV" provided by the National Telecommunications and Information Administration's time-shared computer service "TA Service" in Boulder, Colorado (operated by the U.S. Government). The program is based upon the Longley-Rice propagation model, which uses the methods described in the National Bureau of Standards Technical Note 101. The "HDTV" program was developed in cooperation with the FCC's Office of Science and Technology with the express intent to provide similar results to the FCC's software used to develop the draft DTV allotment table, using the engineering criteria in Appendix A of the 6th FNPRM.

The interference study was performed on the Weston, Cleveland, and Zanesville draft DTV allotments. First, the study determined the population and area that these DTV allotments would cover considering predicted interference from existing NTSC assignments and other draft DTV allotments. From this "baseline" data, the proposed Channel 39 facility was then added to consideration to determine the extent of additional incoming interference caused to each draft DTV facility by the proposed Channel 39 facility. The following table summarizes the data derived.

Table I
Interference Summary
FCC Draft Allotment Table

DTV Allotment	"Existing" interference-limited DTV coverage		Interference-limited coverage with proposed Channel 39			
	population	area (sq km)	population	% of "existing" population	area (sq km)	% of "existing" area
Weston, WV (Channel 39)	499,000	22,640	405,000	**81.2**	17,810	**78.7**
Cleveland, OH (Channel 39)	3,910,000	32,290	3,910,000	**100.0**	32,290	**100.0**
Zanesville, OH (Channel 40)	347,000	8,730	341,000	**98.3**	8,420	**96.4**

"Existing" population and areas refer to those figures that would result from an implementation of the FCC's draft DTV allotment table.

The interference study showed that the proposed Channel 39 NTSC facility is predicted to cause significant interference to the draft DTV channel 39 allotment at Weston, West Virginia, however the impact on the draft DTV allotments at Cleveland and Zanesville is minimal. It is important to note that the draft DTV allotment table was developed *without regard* to the vacant NTSC channel 39 allotment (proposed to be constructed by *Riverbank*). The 6th FNPRM acknowledges that the proposed table is a draft, revisions are anticipated, and states that the Commission will work to revise the draft table as appropriate.

It is believed that a revised DTV table could fully accommodate the proposed Channel 39 facility. For example, comments filed by the Broadcasters Caucus (*"Broadcasters"*) on November 22, 1996 in response to the 6th FNPRM included a modified DTV allotment table. The development of the *Broadcaster's* table was similar to the FCC's draft table, with some differences in planning factors and spectrum recovery. Both tables were developed with the Longley-Rice method of

predicting existing NTSC coverage areas and the goal of its replication with predicted DTV coverage.

As with the FCC's draft table, the channel 39 NTSC facility proposed by *Riverbank* was studied in regard to its potential impact upon the DTV assignments as listed in the *Broadcaster's* modified table. Again using the proposed minimum distance separation requirements in paragraph 98 of the 6th FNPRM, the proposed Channel 39 facility would meet the spacing standards to all DTV allotments as proposed in the Broadcaster's modified table, except for the following:

DTV Facility (*Broadcaster's* modified table)	**Actual Distance (km)**	**Required Spacing (km)**
Akron, OH DTV channel 39	222.7	≥244.6
Zanesville, OH DTV channel 40	70.9	≤9.7 or ≥88.5

As with the FCC's draft table, an interference analysis was performed to study the possible impact of the proposed Channel 39 facility on the *Broadcaster's* modified proposed DTV facilities listed above. The proposed Akron and Zanesville DTV allotments were studied in a similar fashion to the analysis presented earlier for the FCC's draft table. The following summary table shows the results.

Table II
Interference Summary
Broadcaster's Caucus Allotment Table

DTV Allotment	"Existing" interference-limited DTV coverage		Interference-limited coverage with proposed Channel 39			
	population	area (sq km)	population	% of "existing" population	area (sq km)	% of "existing" area
Akron, OH (Channel 39)	3,582,000	20,680	3,581,000	**100.0**	20,660	**99.9**
Zanesville, OH (Channel 40)	347,000	8,740	341,000	**98.3**	8,430	**96.5**

"Existing" population and areas refer to those figures that would result from an implementation of the *Broadcaster's* modified DTV allotment table.

The interference study shows that the proposed Channel 39 facility would have negligible impact upon the Akron DTV assignment, and only minimal impact on the Zanesville assignment. It is noted that the FCC and the *Broadcasters* tables were developed without regard to the vacant NTSC Channel 39 allotment at Parkersburg. The analysis presented herein may should not be construed as to suggest that either table can be adopted "as-is" and fully accommodate the proposed Channel 39 facility. Rather, it is believed, given the minimal effect caused to the *Broadcasters* DTV allotment table "as-is", that a replacement table could be produced (based on either the FCC or *Broadcasters* assumptions) that would accommodate the Channel 39 proposal.

Even on a worst-case basis, if the *Broadcasters* table were implemented as published, the only station to be affected in any meaningful way is the Zanesville DTV channel 40 assignment. The corresponding reduction to the Zanesville DTV allotment's population covered would only be 1.7%. This additional predicted interference, near the fringes of the Zanesville service area, can be mitigated with the use of directional receiving antennas, which are commonly used in such "fringe" areas. In the 6th FNPRM, the Commission recognizes that unavoidable interference will take place between some NTSC and DTV stations, however the interference to all stations is intended to be minimized. Since the area surrounding Parkersburg is under-served,[3] there is a likelihood that sufficient spectrum exists to modify either proposed DTV allotment table to accommodate the proposed Channel 39 NTSC facility. The 6th FNPRM also states that the Commission will work to revise the draft table as appropriate and will continue to consider "freeze" waiver requests on a case-by-case basis.

As an additional topic, the proposed Channel 39 will utilize facilities of 1900 kW effective radiated power ("ERP") at 185 meters above average terrain ("AAT"). Although the maximum facility for Channel 39 in Zone I is 5000 kW at 600 meters AAT, the proposed facility will operate at "reduced" facilities. Grant of a new facility with reduced facilities within a "freeze" area are to be considered on a case-by-case basis, according to 6th FNPRM.[4]

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[3]See *Riverbank* application, file number BPCT-960920IE, **Figure 5** and **6**, and accompanying **Statement C** for discussion of the underserved area in and around Parkersburg, West Virginia.

[4]Paragraph 60

Certification

The undersigned hereby certifies under penalty of perjury that the foregoing statement was prepared by him or under his direction, and that it is true and correct to the best of his knowledge and belief. Mr. Davis is a principal in the firm of *Cavell, Mertz & Perryman, Inc.*, is a Registered Professional Engineer in Virginia, holds a Bachelor of Science degree from Old Dominion University in Electrical Engineering Technology, and has submitted numerous engineering exhibits to various local governmental authorities and the Federal Communications Commission. His qualifications are a matter of record with that agency.

Joseph M. Davis, P.E.
January 17, 1997